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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,138	10/12/2001	Wayne Odom	ODOM01-01	2406

7590   06/15/2004

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ART UNIT	PAPER NUMBER
3713	

DATE MAILED: 06/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/977,138
Filing Date: October 12, 2001
Appellant(s): ODOM ET AL.

MAILED

JUN 1 4 2004

GROUP 3700

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For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 15 March 2004.

(1)   ***Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

(2)   ***Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or

be directly affected by or have a bearing on the decision in the pending appeal is contained in

the brief.

(3)   ***Status of Claims***

The statement of the status of the claims contained in the brief is correct.

(4)   ***Status of Amendments After Final***

No amendment after final has been filed.

(5)   ***Summary of Invention***

The summary of invention contained in the brief is correct.

(6)   ***Issues***

The appellant's statement of the issues in the brief is correct.

(7)   ***Grouping of Claims***

The appellant's statement of the grouping of the claims is correctly presented and both

groups stand or fall together.

(8)   ***Claims Appealed***

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9)   ***Prior Art of Record***

5,630,753	FUCHS	05-1997
5,967,894	KINOSHITA et al.	10-1999
5,042,809	RICHARDSON et al.	08-1991

(10)   ***Grounds of Rejection***

The following ground(s) of rejection are applicable to the appealed claims:

Claims 2-4, 6-14, 16-20, 22-30, 32-38 and 40-48 are rejected under 35 U.S.C. 103(a) as

being unpatentable over Fuchs (US Patent No. 5,630,753) in view of Kinoshita et al. (US Patent

No. 5,967,894).

Claims 5, 15, 21, 31 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Fuchs (US Patent No. 5,630,753) in view of Kinoshita et al. (US Patent No. 5,967,894)

further in view of Richardson et al. (US Patent No. 5,042,809).

These rejections are set forth in a prior Office Action, mailed on 06 October 2003 and

reproduced herein for convenience:

Claims 2-4, 6-14, 16-20, 22-30, 32-38 and 40-48 are rejected under 35 U.S.C. 103(a) as

being unpatentable over Fuchs (US Patent No. 5,630,753) in view of Kinoshita et al. (US Patent

No. 5,967,894).

Fuchs disclose a method and apparatus for playing a card game wherein a processor

selects data symbols from a large number of predetermined in accordance with a randomizing

criteria (Column 1, lines 15-18). Thus the predetermined number of symbols represents a fixed

amount. These symbols from which the processor selects are inherently stored in a data

structure. The player can then place a wager (Column 7, lines 45-51). The player can then play

a series of hands according to the rules of the game and for each hand of play the symbols are

selected from the data structure (Column 1, lines 15-18) and are presented on a display

representing an initial holding of cards (FIG 1). One of ordinary skill in the art understands

according to the rules of poker that this hand will be evaluated according to the rules to see if

the outcome is a winning outcome and the player is thus rewarded. Once a symbol has been

presented, the card data is depleted for further selection and display (Column 9, lines 55-67).

Card data about previous hands is also shown (Column 9, lines 55-67). The player can then

play a subsequent amount of hands (Column 9, lines 60-67).

With regard also to claim 41, it is disclosed that the number of symbols are

predetermined (Column 9, lines 23-27), and are selected randomly (Column 1, lines 15-18).

Further, it is axiomatic to the functionality of the device that the symbols would be stored in a

data structure for access. Fuchs discloses that the symbols are displayed in accordance with a

pre-established game plan and are stored in a list (Column 4, lines 45-53). Henceforth, it would

be obvious to one of ordinary skill in the art that the symbols could be accessed randomly from

the list data structure, or alternatively stored in a random order in the list data structure and then

accessed serially. Both are well known methods of randomizing data and absent a showing of

criticality would have been equivalent design choices to one of ordinary skill in the art.

Fuchs then discloses that the initial hand can be completed by holding cards (Column 6,

lines 37-40) and by replacing select cards (Column 3, lines 1-8). If a player chooses to replace

the cards, the processor replaces the card with still available game symbols that are the next

random card to determine a final outcome (Column 1, lines 36-38).

Fuchs also discloses that at the player's request, or because of a repeatedly appearing

display of new cards, the player can be presented with a display of the initial game symbols

available at the start of the game (Column 9, lines 47-51). Upon a hand being played, the

display (FIG 5) will be updated to reflect the new inventory of the symbols (Column 9, lines 54-

67) available for selection and display. The display of the constituency of the deck is in the form

of a table (FIG 5) including values. The computer will then determine if a player is a winner or

loser and issue an award if applicable (Column 10, lines 30-34). Because it is disclosed that the

machine will pay out a win as a function of the wins scored by the player, it is axiomatic that a

second data structure would be storing a reference table to reference a win amount with a

player combination.

Fuchs discloses that the computer unit displays a number of other or all possible

attainable win-related combinations (Column 1, lines 45-55). One of ordinary skill in the art

could thus say that information is displayed regarding winning outcomes that have been

eliminated. This is achieved by disregarding the display of the information altogether.

Kinoshita et al. disclose an alternate way to display information to the player about any

winning outcomes that have become eliminated. Kinoshita discloses a paytable wherein

outcomes that have been eliminated are displayed with a shading or alternate color (FIG 8(a) or

8(b)). Kinoshita et al. provides motivation for using such a display that it will help a player who

is not familiar with the card game more easily become associated with it (Column 1, lines 40-48)

as well as allows the player to visibly distinguish prize winning hands (Column 3, lines 15-20).

One of ordinary skill in the art understands from the disclosure of Fuchs that possible

combinations could be eliminated before the actual inventory is refreshed. Otherwise, the

inventory could only last one turn and have to be constantly refreshed. Thus, it would have

been obvious to one of ordinary skill in the art to incorporate the display method of Kinoshita et

al. into the system of Fuchs. One would be motivated to implement the teachings of Kinoshita

et al. into the Fuchs system in order to provide the player with a more informative display and

help a player who is not familiar with the card game learn the game more easily and become

associated with it by seeing not only outcomes that are possible, but those that have been

eliminated.

Regarding claims 2-3, 12-13, 18-19 and 28-29, the display is shown upon completion of

the hand as it is stated that from game to game the symbols offered to the player would be

deducted (Column 9, lines 61-65). It is also possible to display the constituency of the deck

data after the selection and display of the card (Column 6, lines 6-36).

Regarding claims 4, 8-9, 14, 20, 24-25, 30 and 34-35, Fuchs also discloses that it is

advantageous to proceed in such a manner that after a certain number of hands and/or after the

presentation of a certain symbol, it is possible to reset the entire number of game symbols

(Column 3, lines 46-53) for further selection and display. Though Fuchs discloses that a certain

number of hands are used as the determining factor, it would be obvious to one of ordinary skill

in the art to use a certain number of symbols as the limiting factor. One would be motivated to

do this because the symbols represent the actual inventory, thus provide a better indication of

when the count of cards may be getting low. Inherently, a counter would be used to determine

the number of symbols in order to issue a signal to reconstitute at a certain number. Therefore,

after a certain predetermined number of symbols have been presented, or a triggering symbol,

the entire stock of symbols s reconstituted into new symbol data for use in the game. Fuchs

discloses this predetermined symbol to be the appearance of a joker (Column 3, lines 48-50).

Regarding claims 6, 16, 22 and 32, upon a hand being played the display (FIG 5) will be

updated to reflect the new inventory of the symbols (Column 9, lines 54-67). The display of the

constituency of the deck is in the form of a table (FIG 5) including values.

Regarding claims 7, 23 and 33, the disclosed embodiment is for slot machine symbols

but in the poker embodiment it would be obvious that the display of the symbols would be for

the suits and values of the card. One of ordinary skill in the art would be motivated to do this in

order to further inform the player about the data regarding the deck in accordance with the

disclosure of Fuchs in that by modifying and perhaps improving the game situation and

prospects of winning against the machine, the actual or apparent improvement in the player's

situation greatly enhances the attractiveness of the gaming machine (Column 2, lines 50-55). Displaying both the suits and numbers would indeed meet this goal.

Regarding claims 10, 26 and 36, Fuchs further discloses a paytable that is recalculated from game to game as a function of the possible game symbols to display some or all of the winning combinations (Column 10, lines 30-55). The display of Fuchs differs in principle from the fixed lists of all possible winning combinations that are presented on normal gaming machines because the information offered to the player is dependent on the game symbols actually appearing in the display symbols or on the symbols which have been held over from a previous game. Therefore, the paytable reflects only the possible winning outcomes to aid the player with the relevant information they need in the shortest time possible (Column 10, lines 30-58).

Regarding new claim 38, Fuchs discloses that in order to ensure that an adequate number of game symbols is available at all times, provision can be made that after a certain number of game or after certain game symbols have appeared, the number of game symbols that can be added to in a random or predetermined fashion. It would be obvious to one of ordinary skill in the art, especially when playing poker, that once the provision for reshuffling has been met, to reconstitute the deck to a form representing the entire deck, as is notoriously known in the art when a card or poker game reaches the point of reshuffle. One would be motivated to do this in order to allow the reconstitution to properly model the rules of how poker is played.

Regarding new claim 40, Kinoshita et al. disclose in a poker game showing a winning outcome award schedule for predetermined winning poker hand outcomes and where depletion of data has eliminated the availability of an award, indicating such (FIG 8a and 8b).

Regarding new claims 42-43, the elements of the method have been discussed above and are incorporated herein based upon the disclosure of Fuchs and Kinoshita et al. Further, it is known and obvious in the art that when playing cards, the card data includes Clubs, Diamonds, Hearts, Spades, and Joker. It was discussed above how it would be obvious to the disclosures to include the suits display in a poker embodiment as well as why one of ordinary skill in the art would display hands that are no longer possible. Fuchs supports allowing complete depleting indicia, as one of ordinary skill in the art would certainly understand how such an event could occur based on the disclosure of Fuchs and the manner in which it was discussed above. In the manner of displaying exhausted cards as opposed to exhausted outcomes, displaying cards over the hands is a design choice of one of ordinary skill in the art, as all the data needed to do such would be present in the system of Fuchs and Kinoshita et al. and the actual display would be a design choice in accordance with the teachings of Kinoshita to further help the player learn the game.

Regarding new claims 44-46, the elements of the method have been discussed above and are incorporated herein based upon the disclosure of Fuchs and Kinoshita et al. Further, Fuchs discloses that symbols that have already been selected and displayed are deducted (column 9, lines 60-65) for the data structure and thus one of ordinary skill in the art would understand they are further excluded. Regarding claim 46, reasons why one of ordinary skill in the art would reconstitute to a full shuffle are discussed above.

Regarding new claims 47-48, the elements of the apparatus have been discussed above and are incorporated herein based upon the disclosure of Fuchs and Kinoshita et al. Further, both prior art systems are indeed played on an electronic device wherein the processor controls the display.

Claims 5, 15, 21, 31 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuchs (US Patent No. 5,630,753) in view of Kinoshita et al. (US patent No. 5,967,894) further in view of Richardson et al. (US Patent No. 5,042,809).

What Fuchs and Kinoshita et al. disclose, teach, and/or suggest has been discussed above and is incorporated herein.

Fuchs discloses reconstituting the inventory when a certain number of symbols have been played or when a certain triggering symbol appears. However, Fuchs does not disclose allowing the player to call for a reconstitution.

Richardson discloses a game where a fixed number of predetermined chances are also used in the form of pull-tabs (Abstract). The number of winning pull-tabs left and the major prizes left are displayed to the player (FIG 3). Richardson provides the player with an input device that can be used to call for a new deal at any time after playing one hand (Abstract, Column 3, lines 66-67). Richardson discloses that it is advantageous to allow for a new deal after all the winning chances have been redeemed or if all the major chances have been redeemed in order to keep the player playing. By incorporating this rule and then allowing a player to reconstitute the winning chances, the player will feel in more control of the machine, as they will be allowed to restore all the winning possibilities at any time and thus be more inclined to continue play as no player would continue play on a machine that clearly indicates no winning chances remain. Therefore, it would have been obvious to one of ordinary skill in the art to incorporate this feature in to the device of Fuchs in order to allow the player to call for a reconstitution in addition to the reconstitution already disclosed. In application to Fuchs, it would have been obvious to one of ordinary skill in the art that the cards disclosed by Fuchs would represent the chances disclosed by Richardson. When a certain card is disposed of, thus generating an impossible outcome for the player, the player would be able to, by applying the

teachings of Richardson (Abstract), call for a reconstitution. One would be motivated to make this combination to allow the player to feel they have a better shot of winning, thus causing the player to play more on the game. Fuchs discloses that when a player feels his game situation is improved and the prospect of winning greater, the actual or apparent improvement in the player's situation greatly enhances the attractiveness of the machine. Thus by allowing the player the power to reconstitute the inventory as taught by Richardson, this goal would be achieved.

(11)   Response to Argument

Appellant begins the appeal presentation by contesting that the Fuchs references (1)

does not disclose or suggest the features of claim 37 (specifically (a) depletion which carries

over to subsequent hands and (b) display of the elimination of outcomes as a result of

depletion), and (2) that the application of Fuchs is a result of hindsight. Next, the Appellant

presents a summary of legal precedents and citation to the MPEP regarding 35 U.S.C. 103(a)

Obviousness.

A. Claim 37

In response to the Appellant's first contention that Fuchs does not disclose (a) depletion

which carries over to subsequent hands of play or (b) display of the elimination of outcomes

which may occur as a result of the depletion, the Examiner respectfully disagrees. The

Appellant has pointed to a number of different places in the references in attempt to support

their assertion and provide the appearance to the Board that the reference does not disclose

depletion which carries over and thereby is a whole different setup. However, this presentation

does not detract from what the reference does indeed explicitly disclose regarding the depletion

from game to game.

Refocusing on the issues at hand and regarding assertion (a), the Examiner presents

that Fuchs does disclose that depletion carries over. Specifically, Fuchs states regarding FIG 5

(which shows the depletion carrying over into the next game):

"Thus, at the start of the game, 24 cherries, 24 apples, 12 bars, 6 stars, 6 hearts, 48 blanks and
1 joker are available. Assuming that the game symbols are presented at four positions in the
display, and assuming that a cherry, two blanks and an apple were presented in a completed
first game, then the display depicted on the right hand side of FIG 4 would not show 23 cherries,
23 apples, 12 bars, 6 stars, 6 hearts, 46 blanks and 1 joker would be available for the *next*
game. Thus from *game to game* (emphasis added) the symbols offered to the player would be
deducted from originally existing symbols so the player can adjust their game accordingly
(Column 9, lines 52-67)."

Hence, Fuchs explicitly discloses that the depletion carries over to subsequent hands of play. As these hands would each be a new game, the depletion would thus be from game to game.

Regarding assertion (b), the Examiner points out to the record that it was never asserted that Fuchs discloses a display of the elimination of outcomes. In response to Appellant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The additional teachings of Kinoshita et al. were used to provide support for the display of eliminated outcomes. The Examiner only maintained that Fuchs displays the eliminations by disregarding their display altogether; thus relying on the teachings of Kinoshita to supply the feature.

The next salient contention by the Appellant is that Fuchs teaches away from displaying outcomes that have been eliminated. The Appellant supports this assertion with a citation to six lines in Fuchs regarding the addition of symbols. The Appellant uses this citation to interpret that Fuchs would never eliminate a winning outcome. The Examiner disagrees with the interpretation that there must always be an adequate amount of winning outcomes. Fuchs discloses provisions are made to allow the symbols to be refreshed; however, this provision does not teach away from displaying outcomes that have been eliminated. Fuchs merely teaches that provisions *can* be made after a certain number of symbols are used, that other symbols could be added. The record establishes that the random processes associated with the selection of symbols in slot machines make it plausible that an outcome to be eliminated before a refresh event occurs.

The Appellant's next argument is that Kinoshita does not support displaying eliminated outcomes. However, the Appellant is not considering the combination of references, as

appealed, in stating that Kinoshita does not suggest deck depletion. The Examiner relied on

Kinoshita et al. as teaching graphical display. Specifically, Kinoshita et al. disclose an alternate

way to display information about winning outcomes that have become eliminated. Kinoshita

discloses a paytable wherein outcomes that have been eliminated are displayed with a shading

or alternate color (FIG 8(a) or 8(b)). Kinoshita et al. provides motivation for using such a display

that it will help a player who is not familiar with the card game more easily become associated

with it (Column 1, lines 40-48) as well as allows the player to visibly distinguish prize winning

hands (Column 3, lines 15-20).

The record supports that in Fuchs possible combinations could be eliminated before the

actual inventory is refreshed. Otherwise, the inventory could only last one turn and would have

to be constantly refreshed. Kinoshita et al. discloses displaying combinations that have been

eliminated in a special manner. The Fuchs display is a simple data table and provides little

information to the player regarding combinations of the data. In gaming it is the combination of

data that counts, thus motivation exists to apply Kinoshita et al. to Fuchs in order to provide

clarity in the display to aid the player. The result of the combination of references would thus

account for this depletion of outcomes as a result of the Fuchs system and the display of this

depletion as supported in Kinoshita et al.

The Appellant's next point is that neither reference addresses the feature of depletion,

which results in the elimination of winning outcomes. The Appellant also submits for contention

that neither displays information regarding eliminated outcomes. The Examiner maintains it is

only required that the combination of the references disclose the information, not each reference

singly. As the Examiner supported above, a skilled artisan would understand that the

elimination of winning outcomes is present in the Fuchs system as the depletion occurs from

game to game, thus axiomatically resulting in certain possibilities being eliminated. Kinoshita et

al. disclose displaying eliminated possibilities and in combination with Fuchs, it would thus serve to display the eliminated possibilities in Fuchs as a result of the outcome depletion. Implementing the teachings of Kinoshita et al. would transform the information of the Fuchs chart into a more easily readable and informative means to transmit the data to the player wherein the player could easily ascertain the outcomes that have been eliminated as a result of the depletion.

Regarding the Appellant's continued argument that deck depletion does not occur in Fuchs, the Examiner respectfully submits this fact has been substantially addressed and supported above and therefore further arguments using such reasoning as a basis are not convincing to the Examiner as it has been thoroughly disclosed otherwise (see Fuchs, Column 9, lines 52-67).

The Appellant is also of the position that one of ordinary skill would not understand Fuchs eliminates winning possibilities. Fuchs does not teach, as argued by Appellant that there must **always** be an adequate amount of winning outcomes. Fuchs merely teaches that provisions *can* be made after a certain *number* of symbols are used, that other symbols could be added. The Appellant perceives this to mean that a winning combination will never be eliminated. However, the Examiner contends this provision does not include disclosure that every time a winning outcome is eliminated a new symbol is added. Certainly, if a combination of symbols would be eliminated in the first hands, a skilled artisan understands that possible winning combinations has been eliminated as a result. One of ordinary skill in the art would thus have understood that Fuchs discloses the event occurs after a certain *number* of symbols are used, not after a winning combination is used. Further, one would thus understand Fuchs eliminates winning possibilities.

Appellant sums the presentation by alleging that (2) the Examiner has used impermissible hindsight in rejecting the instant claims and that (3) the Examiner has not made the requisite showing of obviousness. In response to (2) Appellant's argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the Appellant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Here, Kinoshita et al. clearly provides motivation for why a skilled artisan would have displayed data in a certain way. Kinoshita et al. explicitly disclose this motivation as such a display will help a player who is not familiar with the card game more easily become associated with it (Column 1, lines 40-48) as well as allows the player to visibly distinguish prize winning hands (Column 3, lines 15-20). In looking to solve this problem, one of ordinary skill in the art would reasonably be expected to encounter the teachings of both references. One would see the advantages provided by the display presented in Kinoshita et al. In viewing Kinoshita et al., one would readily see an additionally way to display the data—by using an approach that displays combinations and eliminations, not just data. The issue is the clarity of the display. Incorporation of the Kinoshita et al. teachings into the base references naturally follows. All that is taken into account is knowledge that was within the level of ordinary skill at the time the claimed invention was made, and no knowledge gleaned only from the Appellant's disclosure is used.

B. Claim 38

The Appellant then asserts arguments regarding claim 38 and is applying a passage from the Final Office Action, paper No. 11. The Examiner submits the argument is not

coterminous with what is being claimed in claim 38. The claim is directed towards reconstituting

the deck to a *full deck* when a certain number is reached. The cited passage by the Appellant

user in the argument is not coterminous in regards to this claim as the language is directed to

other features (i.e. symbols and the number of symbols).

The Appellant then presents that claim 38 requires an electronic poker game with deck

depletion to trigger reconstitution. This requirement is not coterminous with the claim, which also

requires reconstitution to a full deck. The Examiner disagrees with the Appellant's summary of

the rejection regarding this claim. The Examiner only stated:

> "It would be obvious to one of ordinary skill in the art, especially when playing poker,
> that once the provision for reshuffling has been met, to reconstitute the deck to a form
> representing the entire deck, as is notoriously known in the art when a card or poker game
> reaches the point of reshuffle. One would be motivated to do this in order to allow the
> reconstitution to properly model the rules of how poker is played."

The Examiner is merely asserting that the rules of poker are known in the art and adhering to

them would be obvious when performing a shuffle.

C. Claim 11

Regarding the Appellant's assertion that the Examiner has not supported the fact that it

would be obvious to access a list randomly as opposed to randomizing before putting in a list

and then accessing it serially, the Examiner maintains Fuchs discloses that the symbols are

displayed in accordance with a pre-established game plan and are stored in a list (Column 4,

lines 45-53). Henceforth, it would be obvious to one of ordinary skill in the art that the symbols

could be accessed randomly from the list data structure, or alternatively stored in a random

order in the list data structure and then accessed serially. Both are well known methods of

randomizing data and absent a showing of criticality would have been equivalent design choices

to one of ordinary skill in the art. The Examiner maintains that a skilled artisan would be well

schooled in data structures and linked lists and would find it obvious to use the various known methods for achieving randomness.

D. Claim 42

Regarding the Appellant's continued argument that outcome depletion does not occur in Fuchs, the Examiner respectfully submits this fact has been substantially addressed and supported above and therefore further arguments using such reasoning are not convincing to the Examiner as it has been thoroughly recorded otherwise. Fuchs does not, as asserted by Appellant, teach there must **always** be an adequate amount of game symbols. Fuchs only discloses that provisions **can** be made after a certain number of symbols are used, that other symbols could be added. Fuchs does not make this an explicit requirement as interpreted by Appellant. The record supports that one of ordinary skill in the art certainly understands that random processes could eliminate winning outcomes before this refresh event occurs.

E. Claim 5

Regarding Appellant's arguments that Richardson is not random in the same way the Appellant's invention is, the Examiner respectfully submits that argument is not coterminous with what is being claimed and does not relate to the teachings garnished from Richardson and applied to Fuchs. The teachings are directed to reconstituting an inventory after certain winning combinations are already played.

Regarding Appellant's assertions that Richardson '809 teaches away from the present invention, the Examiner respectfully disagrees. The type of game Richardson discloses is not relied upon; *the teaching of reconstituting a dead inventory* is what the Examiner used in the rejection. In response to the assertion that the Appellant ascertains that Richardson does not permit reconstitution of the original inventory, the Examiner respectfully submits that when the teaching garnished from Richardson is applied to a card game as disclosed by Fuchs, one of

ordinary skill in the art would understand that the original inventory would be replenished, as both slot machines and card games have fixed symbols for use. Richardson discloses a game where a fixed number of predetermined chances are also used in the form of pull-tabs (Abstract). The number of winning pull-tabs left and the major prizes left are displayed to the player (FIG 3). Richardson provides the player with an input device that can be used to call for a new deal at any time after playing one hand (Abstract, Column 3, lines 66-67). Richardson discloses that it is advantageous to allow for a new deal after all the winning chances have been redeemed or if all the major chances have been redeemed in order to keep the player playing. By incorporating this rule and then allowing a player to reconstitute the winning chances, the player will feel in more control of the machine, as they will be allowed to restore all the winning possibilities at any time and thus be more inclined to continue play as no player would continue play on a machine that clearly indicates no winning chances remain. Therefore, it would have been obvious to one of ordinary skill in the art to incorporate this feature in to the device of Fuchs in order to allow the player to call for a reconstitution in addition to the reconstitution already disclosed. In application to Fuchs, it would have been obvious to one of ordinary skill in the art that the cards disclosed by Fuchs would represent the chances disclosed by Richardson. When a certain card is disposed of, thus generating an impossible outcome for the player, the player would be able to, by applying the teachings of Richardson (Abstract), call for a reconstitution. One would be motivated to make this combination to allow the player to feel they have a better shot of winning, thus causing the player to play more on the game. Fuchs discloses that when a player feels his game situation is improved and the prospect of winning greater, the actual or apparent improvement in the player's situation greatly enhances the attractiveness of the machine. Thus by allowing the player the power to reconstitute the inventory as taught by Richardson, this goal would be achieved.

Regarding the Appellant's assertion that because Richardson is a lottery game, one of ordinary skill in the art would not look to it, the Examiner respectfully disagrees. First, as disclosed above, the type of game is not paramount to the teachings of reshuffling a dead inventory and second, one of ordinary skill in the art understands that lotteries are analogous to slot machines in that both represent a result which will be compared to a set of defined outcomes in order to obtain winnings. Both are known forms of gambling and are art-related in classification as well as their operation and purpose.

Regarding the Appellant's assertion of hindsight reasoning, the Examiner respectfully disagrees as support for all assertions is clearly defined and pointed out in the references and the combinations are all made with the proper and required statements of motivation drawn from the references and the state of the art.

F. Conclusion

In conclusion, the Fuchs reference teaches of a method for displaying the data relating to the constituency remaining for the game and the depletion from game to game carries over. Fuchs allows for reconstitution based on different factors and it would follow suit that if a depletion event were to eliminate an outcome before the reconstitute is called for, it would no longer be available. Fuchs displays the constituency for the user in order to help the user form strategy. Kinoshita et al. displays outcomes that have been eliminated and teaches benefits that would enhance the display of Fuchs to better inform the user. Fuchs allows for the deck to be reconstituted based on certain factors, but does not explicitly name a user calling for it being one of them. Aside from the fact that *no user would play a game with no winning outcomes*, it would be obvious to allow the user to call for a reconstitute in order to allow a player to reconstitute the winning chances, the player will feel in more control of the machine, as they will be allowed to restore all the winning possibilities at any time and thus be more inclined to

continue play as no player would continue play on a machine that clearly indicates no winning

chances remain.   Thus, the combination of references serve to provide disclosure, teaching,

and support for the claims at hand and thus render the invention obvious for the reasons and

details discussed above.

     For the above reasons, it is believed that the rejections should be sustained.

          Respectfully submitted,

Christina M. Marks   JESSICA HARRISON
June 9, 2004   PRIMARY EXAMINER

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